HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:26936 OF 2007

Dated:20.12.2007

Between:

The Agricultural Market Committee,
Thungathruty Nalgonda District rep., by
its Secretary.

..Petitioner

And

1. The Commissioner of Income Tax (Appeals) VI
   Aayakar Bhavar, III Floor, Basheerbagh, Hyderabad
   and others.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No:26936 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the notice dated 19.11.2007 issued under Section 226 (3) of the Income Tax Act by the 2nd respondent as illegal and arbitrary and to set aside the same.

The main grievance of the petitioner is that the appeal preferred before the 1st respondent challenging the assessment order of the 2nd respondent was dismissed and further appeal has been preferred before the Income Tax Appellate Tribunal. While so, the 2nd respondent issued garnishee notice to the 3rd respondent for recovery of the tax in question. Aggrieved by the same, the present writ petition is filed by the petitioner.

Heard the learned Counsel appearing for the petitioner and the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that an appeal is pending before the Income Tax Appellate Tribunal, and at this stage, the issuance of the garnishee notice is contrary to law and at this juncture, if the stay is not granted and in case the recovery of the disputed tax in question is effected during the pendency of the appeal before the Appellate Tribunal,

the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated and therefore, the impugned garnishee notice is liable to be set aside.

On the other hand, Sri J.V. Prasad opposed the petition on the ground that since the appeal is pending before the appellate authority, it is for it to grant stay.

In the facts and circumstances of the case and in view of the pendency of the appeal, without expressing any opinion on the merits of the case, We feel it a fit case wherein the garnishee notice in question can be suspended, but subject to imposition of certain conditions.

At this stage, it is the contention of the learned Counsel for the petitioner that if the garnishee notice is not suspended, it is much difficult to operate the account to meet the regular transactions and also to comply with the order of this Court.

In view of the above submission, We deem it appropriate to suspend the garnishee notice so as to enable the petitioner to continue the operation of the account and comply with the conditions that would be imposed while granting stay by this Court, till the disposal of the statutory appeal filed by the petitioner.

Accordingly, there shall be suspension of the garnishee notice till the disposal of the appeal pending before the Income Tax Appellate Tribunal, subject to the condition of the petitioner depositing Rs.5,00,000/- (Rupees Five Lakhs only), within a period of four (4) weeks from today. On such deposit, the appeal shall

be disposed of within three months thereafter. It is needless to observe that in case of non-compliance of the above order, the garnishee notice shall become operative.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice C.V. Nagarjuna Reddy

Date: 20th December, 2007

Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MR JUSTICE C.V. NAGARJUNA REDDY

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WRIT PETITION No:26936 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

Dated:20.12.2007